

MEMORANDUM OF LAW

DATE: December 11, 1992

TO: Charles Yackly, Deputy Water Utilities Director,
Services Division

FROM: City Attorney

SUBJECT: Water Utilities Expenditures for Water Fixtures
Utilized by Park and Recreation Department

By memorandum of November 25, 1992 you describe ongoing activities of the Water Utility funding various activities. Specifically, however, you seek our advice on the propriety of funding the acquisition of supplies to replace damaged or deteriorated fixtures utilized for the irrigation of City Park and Recreation Department facilities. You detail that this will be accomplished through a memorandum of understanding and will be administered through and an adjunct to the Water Conservation Program.

We have thoroughly reviewed both the purpose and methodology of this expenditure and find such to be an appropriate and proper utilization of Water Utility funds based on the following reasoning and subject to the following restrictions.

Consistent with San Diego City Charter section 53, we have long advised that the Charter requires the Water Utility to be a financially independent, self-sustaining water utility. (See the 1932-1991 City Attorney pronouncements articulated in the attached January 9, 1991 Memorandum of Law.) While many of these restrictions on the Water Utility expenditures were based on bond covenants, we need not address those here since all water bonds have been retired. Financial Report of the Water Utilities Department 1991, Schedule A-2, p. 46.

Hence we must turn to the Charter language itself to ascertain the legitimacy of the expenditure.

All revenues of the Water Utility
shall be deposited in a Water Utility
Fund. The Manager shall include in
the annual budget the estimated
expenditure and reserve requirements

of the Water Utility Fund. The City Council using such estimates as a basis shall include in the annual appropriation ordinance for the Water Utility Fund provision for operating and maintenance costs; replacements, betterments, and expansion of facilities; payments necessary for obtaining water from the Colorado River; any other contractual obligations; reserves for future expansion of water utility plant; reserves for future water purchases. In addition thereto, the Council shall levy annually a tax sufficient to provide for the redemption of municipal bonds heretofore or hereafter issued for water purposes, together with a sum sufficient to pay the interest thereon. The amount of money necessary to be raised each year for the redemption of water bonds and the payment of interest thereon and for the retirement of any other funded or contractual indebtedness incurred by purchase or otherwise for the development, conservation or distribution of water shall be charged annually against the Water Utility on the accounts of the City ¶Emphasis added.σ

San Diego City Charter section 53.

The express language of the Charter provides for expenditures to further the "conservation" of water. This express provision is loudly amplified in the policy of the City Council:

Section 67.38.2 Declaration of
Policy

The City Council, by and
through its Water Utilities

Department, finds and determines that a water shortage c
exist based upon the occurrence of one

or more of the following conditions:

a. A general water supply
shortage due to increased demand or

limited supply.

b. Distribution or storage facilities of the Metropolitan Water District of Southern California, the San Diego County Water Authority, or the City of San Diego become inadequate.

c. A disruption of the supply, storage and distribution facilities of the Metropolitan Water District of Southern California, the San Diego County Water Authority, or the City of San Diego occurs.

It is hereby declared that, because of the conditions prevailing in the City of San Diego, the general welfare requires that the City maximize the beneficial use of its available water resources to the extent to which they are capable, and that the waste or unreasonable use, or unreasonable method of use of water be prevented and the conservation of such water is to be extended with a view to the reasonable and beneficial use thereof in the interests of the people of the City of San Diego and for the public welfare. ¶Emphasis added.σ

Hence the expenditure of funds to further water conservation is expressly recognized in Section 53 of the City Charter and fully encouraged by the declaration that such conservation is in the general welfare. That replacement of damaged or deteriorated fixtures furthers such conservation is undisputed. The mere fact that such fixtures are in the possession of another department does nothing to either lessen the water conservation effort or threaten the financial independence of the Water Utility. Our pronouncements since 1932 have heralded the financial independence of the Water Utility as specified in the Charter; to the extent that efficient fixtures conserve water, they operate to enhance such an independence by limiting the need of the department to purchase water. This clearly preserves the financial independence of the department as well as minimizes the charges to the ratepayer. The purchase of such efficient fixtures appears to directly benefit the

department and is analogous to Water Utilities' purchase of back-flow devices, similarly benefiting Park and Recreation, which we found appropriate in our Memorandum of Law of January 9, 1991 (see attached).

To memorialize this arrangement through the proposed memorandum of understanding is strongly encouraged. We note that as drafted, this memorializes the purpose to further water conservation and, just as importantly, limits the expenditures to "irrigation fixtures only." We think this is necessary to preserve the nexus between the expenditure and the benefit to the Water Utilities Department. To that end, we believe the memorandum should be strengthened to articulate that nexus and to limit the transfer of funds by more restrictive language. Such a modification can be accomplished through a separate vehicle and need not be memorialized here.

Conclusion

By reason of the express language of San Diego City Charter section 53 and the nexus between the proposed expenditures and water conservation, we find Water Utility funding for replacement of deteriorated irrigation fixtures to be an appropriate expenditure by the Water Utility.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:400(x043.2)

Attachment:1

cc Milon Mills, Jr.,

Water Utilities Director

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